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 Recovery Room, Inc.

6  
 7 UNITED STATES DISTRICT COURT  
 8 NORTHERN DISTRICT OF CALIFORNIA

9 CRAIG YATES, an individual; and  
 10 DISABILITY RIGHTS, ENFORCEMENT,  
 EDUCATION, SERVICES: HELPING  
 YOU HELP OTHERS, a California public  
 11 benefit corporation,

12 Plaintiffs,

13 v.

14 RED'S RECOVERY ROOM, INC. a California  
 15 corporation and TOWNSEND  
 CAPITAL PARTNERS, LLC,

16 Defendants.

17 Case No. C 07 4395 JCS

**18 ANSWER TO FIRST AMENDED  
 19 COMPLAINT FOR INJUNCTIVE  
 20 RELIEF AND DAMAGES ON  
 21 BEHALF OF DEFENDANT RED'S  
 22 RECOVERY ROOM, INC.**

23 Comes now Defendant Red's Recovery Room, Inc. and answers Plaintiffs'  
 First Amended Complaint ("the Complaint") as follows:

24 1. Answering Paragraph 1 of the Complaint, defendant Red's recovery  
 25 Room is a place of public accommodation. Defendant is without sufficient  
 26 knowledge or information to form a belief as to the truth of the remaining  
 27 allegations and on that basis denies those allegations.

28 2. Answering Paragraph 2, defendant denies that Yates was an invitee,  
 guest, patron, or customer at Red's Recovery Room and denies that it failed to  
 provide proper legal access. Defendant admits it operates a place of public  
 accommodation in Cotati, California. Defendant is without sufficient knowledge or

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1 information to form a belief as to the truth as to the remaining allegations and on  
2 that basis denies those allegations.

3       3. Answering Paragraph 3 of the Complaint entitled "Jurisdiction,"  
4 defendant admits that the Court has jurisdiction pursuant to 28 USC §1331 and  
5 pendent jurisdiction over plaintiffs' state law claims but otherwise denies the  
6 remaining allegations in said paragraph.

7       4. Answering Paragraph 4 of the Complaint, defendant admits that the  
8 alleged claims arose in this judicial district, but otherwise denies the remaining  
9 allegations in said paragraph.

10      5. Answering Paragraph 5 of the Complaint, defendant is without  
11 sufficient knowledge or information to form a belief as to the truth of the  
12 allegations contained in said paragraph, and on that basis denies each and every  
13 allegation contained therein.

14      6. Answering Paragraph 6 of the Complaint, defendant is without  
15 sufficient knowledge or information to form a belief as to the truth of the  
16 allegations contained in said paragraph, and on that basis denies each and every  
17 allegation contained therein.

18      7. Answering Paragraph 7 of the Complaint, defendant is without  
19 sufficient knowledge or information to form a belief as to the truth of the  
20 allegations contained in said paragraph, and on that basis denies each and every  
21 allegation contained therein.

22      8. Answering Paragraph 8 of the Complaint, defendant admits that  
23 Townsend Capital Partners is the lessor and it is the lessee of a bar at 8175  
24 Gravenstein Highway, Cotati, CA. The remaining allegations in paragraph 8 set  
25 forth conclusions of law to which no response is required.

26      9. Answering Paragraph 9 of the Complaint, defendant admits that Red's  
27 Recovery Room is a bar that is open to the general public. The remaining  
28 allegations in paragraph 9 set forth conclusions of law to which no response is

1 required.

2       10. Answering Paragraph 10 of the Complaint, defendant denies  
3 that it violated any disability access law. The remaining allegations in paragraph  
4 10 set forth conclusions of law to which no response is required.

5       11. Answering Paragraph 11, defendant admits that Red's Recovery  
6 Room is a bar located at 8175 Gravenstein Highway, in Cotati, CA. The remaining  
7 allegations in paragraph 11 set forth conclusions of law to which no response is  
8 required.

9       12. Answering Paragraph 12 of the Complaint, defendant is without  
10 sufficient knowledge or information to form a belief as to the truth of the  
11 allegations contained in said paragraph, and on that basis denies each and every  
12 allegation contained therein

13       13. Answering Paragraph 13 of the Complaint, defendant denies each and  
14 every allegation contained therein.

15       14. Answering Paragraph 14 of the Complaint, defendant is without  
16 sufficient knowledge or information to form a belief as to the truth of the  
17 allegations contained in said paragraph, and on that basis denies each and every  
18 allegation contained therein.

19       15. Answering Paragraph 15 of the Complaint, defendant is without  
20 sufficient knowledge or information to form a belief as to the truth of the  
21 allegations contained in said paragraph, and on that basis denies each and every  
22 allegation contained therein.

23       16. Answering Paragraph 16 of the Complaint, defendant is without  
24 sufficient knowledge or information to form a belief as to the truth of the  
25 allegations contained in said paragraph, and on that basis denies each and every  
26 allegation contained therein.

27       17. Answering Paragraph 17 of the Complaint, defendant is without  
28 sufficient knowledge or information to form a belief as to the truth of the

1 allegations contained in said paragraph, and on that basis denies each and every  
2 allegation contained therein.

3 18. Answering Paragraph 18 of the Complaint, defendant is without  
4 sufficient knowledge or information to form a belief as to the truth of the  
5 allegations contained in said paragraph, and on that basis denies each and every  
6 allegation contained therein.

7 19. Answering Paragraph 19 of the Complaint, defendant is without  
8 sufficient knowledge or information to form a belief as to the truth of the  
9 allegations contained in said paragraph, and on that basis denies each and every  
10 allegation contained therein.

11 20. Answering Paragraph 20 of the Complaint, defendant is without  
12 sufficient knowledge or information to form a belief as to the truth of the  
13 allegations contained in said paragraph, and on that basis denies each and every  
14 allegation contained therein.

15 21. Answering Paragraph 21 of the Complaint, defendant is without  
16 sufficient knowledge or information to form a belief as to the truth of the  
17 allegations contained in said paragraph, and on that basis denies each and every  
18 allegation contained therein.

19 22. Answering Paragraph 22 of the Complaint, defendant is without  
20 sufficient knowledge or information to form a belief as to the truth of the  
21 allegations contained in said paragraph, and on that basis denies each and every  
22 allegation contained therein.

23 23. Answering Paragraph 23 of the Complaint, defendant is without  
24 sufficient knowledge or information to form a belief as to the truth of the  
25 allegations contained in said paragraph, and on that basis denies each and every  
26 allegation contained therein.

27 24. Answering Paragraph 24 of the Complaint, defendant is without  
28 sufficient knowledge or information to form a belief as to the truth of the

1 allegations contained in said paragraph, and on that basis denies each and every  
2 allegation contained therein.

3       25. Answering Paragraph 25 of the Complaint, defendant is without  
4 sufficient knowledge or information to form a belief as to the truth of the  
5 allegations contained in said paragraph, and on that basis denies each and every  
6 allegation contained therein.

7       26. Answering Paragraph 26 of the Complaint, defendant is without  
8 sufficient knowledge or information to form a belief as to the truth of the  
9 allegations contained in said paragraph, and on that basis denies each and every  
10 allegation contained therein.

11       27. Answering Paragraph 27 of the Complaint, defendant is without  
12 sufficient knowledge or information to form a belief as to the truth of the  
13 allegations contained in said paragraph, and on that basis denies each and every  
14 allegation contained therein.

15       28. Answering Paragraph 28 of the Complaint, defendant is without  
16 sufficient knowledge or information to form a belief as to the truth of the  
17 allegations contained in said paragraph, and on that basis denies each and every  
18 allegation contained therein.

19       29. Answering Paragraph 29 of the Complaint, defendant specifically  
20 denies that it violated any disability access laws. The remaining allegations in  
21 paragraph 29 set forth conclusions of law to which no response is required.

22       30. The allegations in paragraph 30 set forth conclusions of law to which  
23 no response is required.

24       31. Answering Paragraph 31 of the Complaint, defendant is without  
25 sufficient knowledge or information to form a belief as to the truth of the  
26 allegations that Yates sent letters to the landlord and tenant, what the letters  
27 stated and whether or not he received a response, and on that basis denies those  
28 allegations. Defendant denies the remaining allegations in paragraph 31 that do

1 not set forth conclusions of law to which no response is required and specifically  
2 denies that it violated any disability access law.

3 32. Answering Paragraph 32 of the Complaint, defendant denies each and  
4 every allegation contained therein.

5 33. Answering Paragraph 33 of the Complaint, defendant denies each and  
6 every allegation contained therein.

7 34. Answering Paragraph 34 of the Complaint, defendant denies each and  
8 every allegation contained therein.

9 35. Answering Paragraph 35 of the Complaint, defendant denies each and  
10 every allegation contained therein.

11 36. Answering Paragraph 36 of the Complaint, defendant denies each and  
12 every all

13 37. Answering Paragraph 37 of the Complaint, defendant denies each and  
14 every allegation contained therein.

15 38. Answering Paragraph 38 of the Complaint, defendant denies the  
16 allegations that do not set forth conclusions of law to which no response is  
17 required and specifically denies that it violated any disability access law and that  
18 plaintiffs are entitled to any relief or damages as a result of its conduct.

19 39. Answering Paragraph 39 of the Complaint, defendant denies the  
20 allegations that do not set forth conclusions of law to which no response is  
21 required and specifically denies that it violated any disability access law.

22 40. Answering Paragraph 40 of the Complaint, defendant denies the  
23 allegations that do not set forth conclusions of law to which no response is  
24 required and specifically denies that it violated any disability access law and that  
25 plaintiffs are entitled to any relief or damages as a result of its conduct.

26 41. Answering Paragraph 41 of the Complaint, defendant denies the  
27 allegations that do not set forth conclusions of law to which no response is  
28 required and specifically denies that it violated any disability access law and that

plaintiffs are entitled to any relief or damages as a result of its conduct.

42. Answering Paragraph 42 of the Complaint, defendant denies the allegations that do not set forth conclusions of law to which no response is required and specifically denies that it violated any disability access law and that plaintiffs are entitled to any relief or damages as a result of its conduct.

43. Answering Paragraph 43 of the Complaint, defendant denies the allegations that do not set forth conclusions of law to which no response is required and specifically denies that it violated any disability access law or the civil rights of plaintiffs and that plaintiffs are entitled to any relief or damages as a result of its conduct.

44. Answering Paragraph 44 of the Complaint, defendant is without sufficient knowledge or information to form a belief as to the allegations that Yates and DREES would, could and will return to Red's and on that basis denies those allegations. Defendant denies the remaining allegations in Paragraph 44.

**FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC  
ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES**

## **ACT OF 1990**

45. Answering Paragraph 45 of the Complaint, defendant incorporates its responses to paragraphs 1 through 44 into this response.

46. The allegations in Paragraph 46 set forth conclusions of law to which no response is required.

47. The allegations in Paragraph 47 set forth conclusions of law to which no response is required.

48. The allegations in Paragraph 48 set forth conclusions of law to which no response is required.

49. The allegations in Paragraph 46 set forth conclusions of law to which no response is required.

50. Answering Paragraph 50 of the Complaint, defendant denies the

1 allegations that do not set forth conclusions of law to which no response is  
2 required and specifically denies that it violated any disability access law and that  
3 plaintiffs are entitled to any damages as a result of its conduct.

4 51. Answering Paragraph 51 of the Complaint, defendant denies the  
5 allegations that do not set forth conclusions of law to which no response is  
6 required and specifically denies that it violated any disability access law.

7 52. Answering Paragraph 52 of the Complaint, defendant denies the  
8 allegations that do not set forth conclusions of law to which no response is  
9 required and specifically denies that it violated any disability access law.

10 53. Answering Paragraph 53 of the Complaint, defendant denies each and  
11 every allegation contained therein.

12 54. Answering Paragraph 54 of the Complaint, defendant denies each and  
13 every allegation contained therein.

14 55. Answering Paragraph 55 of the Complaint, defendant is without  
15 sufficient knowledge or information to form a belief as to the truth of the allegation  
16 that Yates has not returned to Red's since on or about July 22, 2007 and on that  
17 basis denies it. Defendant denies the remaining allegation contained therein.

18 56. Paragraph 56 of the Complaint sets forth a prayer for relief and  
19 conclusions of law to which no response is required.

20 **SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN**  
21 **VIOLATION OF CALIFORNIA CIVIL CODE §§ 54, 54.1 AND 54.3 ET. SEQ.**

22 57. Defendant incorporates its responses to paragraphs 1 through 56 of  
23 this answer.

24 58. The allegations in Paragraph 58 set forth conclusions of law to which  
25 no response is required.

26 59. The allegations in Paragraph 59 set forth conclusions of law to which  
27 no response is required.

1       60. The allegations in Paragraph 60 set forth conclusions of law to which  
 2 no response is required.

3       61. Answering Paragraph 61 of the Complaint, defendant is without  
 4 sufficient knowledge or information to form a belief as to the truth of the allegation  
 5 that Yates and the membership of DREES are persons with physical disabilities  
 6 and on that basis denies those allegations. Defendant denies the remaining  
 7 allegations in paragraph 61 that do not set forth conclusions of law to which no  
 8 response is required.

9       62. Answering Paragraph 62 of the Complaint, defendant is without  
 10 sufficient knowledge or information to form a belief as to the truth of the allegation  
 11 that Yates is a person with physical disabilities and on that basis denies that  
 12 allegation. Defendant denies the remaining allegations in paragraph 62 that do  
 13 not set forth conclusions of law to which no response is required.

14       63. Answering Paragraph 63 of the Complaint, defendant denies the  
 15 allegations that do not set forth conclusions of law to which no response is  
 16 required and specifically denies that it violated any disability access law.

17       64. Answering Paragraph 64 of the Complaint, defendant is without  
 18 sufficient knowledge or information to form a belief as to the truth of the  
 19 allegations that plaintiffs are person with physical disabilities or an entity  
 20 representing persons with physical disabilities and on that basis denies those  
 21 allegations. Defendant denies the remaining allegations in paragraph 64 that do  
 22 not set forth conclusions of law to which no response is required.

23       65. Answering Paragraph 65 of the Complaint, defendant denies the  
 24 allegations that do not set forth conclusions of law to which no response is  
 25 required and specifically denies that it violated any disability access law.

26                   **THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY  
 27 FACILITIES IN VIOLATION OF HEALTH AND SAFETY CODE § 19955 ET.SEQ.**

28       66. Defendant incorporates its responses to paragraphs 1 through 65 of

1 this answer.

2       67. The allegations in Paragraph 67 set forth conclusions of law to which  
 3 no response is required.

4       68. Answering Paragraph 63 of the Complaint, defendant denies the  
 5 allegations that do not set forth conclusions of law to which no response is  
 6 required.

7       69. Answering Paragraph 69 of the Complaint, defendant denies the  
 8 allegations that do not set forth conclusions of law to which no response is  
 9 required.

10      70. The allegations in Paragraph 70 set forth conclusions of law to which  
 11 no response is required.

12      71. Answering Paragraph 70 of the Complaint, defendant denies the  
 13 allegations that do not set forth conclusions of law to which no response is  
 14 required.

15      72. Answering Paragraph 72 of the Complaint, defendant denies the  
 16 allegations that do not set forth conclusions of law to which no response is  
 17 required.

18      73. Paragraph 73 of the Complaint sets forth a prayer for relief and  
 19 conclusions of law to which no response is required.

20      **FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL  
 21 ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR  
 22 SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE § 51 ET. SEQ.**

23      74. Defendant incorporates its responses to paragraphs 1 through 73 of  
 24 this answer.

25      75. Answering Paragraph 75 of the Complaint, defendant denies the  
 26 allegations that do not set forth conclusions of law to which no response is  
 27 required.

28      76. Answering Paragraph 76 of the Complaint, defendant denies the

allegations that do not set forth conclusions of law to which no response is required.

77. Answering Paragraph 77 of the Complaint, defendant incorporates its responses to paragraphs 45 through 56 and denies the allegations that do not set forth conclusions of law to which no response is required.

78. Answering Paragraph 78 of the Complaint, defendant denies the allegations that do not set forth conclusions of law to which no response is required.

## **AFFIRMATIVE DEFENSES**

1. As a first affirmative defense, defendant asserts that the Complaint and each claim therein are barred by the applicable statutes of limitations.

2. As a second affirmative defense, defendant asserts that the plaintiffs lack standing to bring each of the claims in the Complaint.

3. As a third affirmative defense, defendant asserts that it is not subject to the provisions of California Health & Safety Code §19955 in that Red's Recovery Room were constructed prior to 1970 and no alterations of the premises have been undertaken.

4. As a fourth affirmative defense, defendant asserts that plaintiffs failed to mitigate their damages, if any.

5. As a fifth affirmative defense, defendant has and continues to make appropriate alterations to its existing facilities, to the extent that such alterations are “readily achievable.” Insofar as defendant has not made the alteration to its existing facilities that plaintiffs contends should have been made those alterations were not and are not required under Federal or California law, as those alterations were not and are not “readily achievable.”

6. As a sixth affirmative defense, insofar as defendant has not made alterations to its existing facilities which plaintiffs contends should have been made, those changes were not and are not required under Federal or California

1 law, and any requirement to make those changes would impose an undue burden  
2 upon defendant.

3       7. As a seventh affirmative defense, as a consequence of the conduct  
4 attributable to plaintiffs in connection with the alleged incidents that are the  
5 subject of this litigation and the bringing of this claim, plaintiffs have waived any  
6 right to secure relief from defendant.

7       8. As an eighth affirmative defense, as a consequence of the conduct  
8 attributable to plaintiff in connection with the alleged incidents that are the  
9 subject of this litigation and the bringing of this claim, plaintiffs are estopped from  
10 securing any relief from defendant.

11           WHEREFORE, defendants pray as follows:

12       1. That plaintiffs take nothing by reason of their complaint, that  
13 judgment be rendered in favor of defendant;

14       2. That defendant be awarded their costs of suit incurred in defense of  
15 this action;

16       3. And for such other and further relief as the Court deems proper.

17 Dated: January 18, 2008

PROVENCHER & FLATT LLP

19           By: s/ GAIL F. FLATT

20           Gail F. Flatt  
21           Attorneys for Defendant  
22           Red's Recovery Room, Inc.  
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